IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 198 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

ANIL STARCH PRODUCTS LTD

Appearance:

MR AKIL KURESHI FOR MR RP BHATT for Petitioner

MR JP SHAH for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 07/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

1. This Reference has been referred at the instance of the Revenue for our opinion on the following question of law for the assessment year 1980-81:

"Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal has been right in law in holding that cash payment of Rs.44,782/- to the employees as house rent allowance cannot be considered as forming part of salary of the employees for the purposes of Section 40A(5) of the Income-tax Act, 1961?"

2. Mr Kureshi learned counsel appearing for the Revenue states that the controversy is settled by a decision of the Supreme Court in Commissioner of Income-Tax v. Mafatlal Gangabhai and Co. (P) Ltd. (1996) 219 ITR 644 wherein it has been held that cash payment to the employees for house rent allowance does not fall within the ambit of Section 40A(5)(a)(ii). The Apex Court specifically overruled the Kerala High Court's decision in Commonwealth Trust Ltd's case (1982) 135 ITR 19 (FB) on which the Revenue had relied and approved the view of the other High Courts upon which the Tribunal has relied in the instant case.

Accordingly, we answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue.

The Reference is disposed of accordingly.

There shall be no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

(M.S. SHAH, J)

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